

ORIGINAL OPEN MEETING ITEM
9/7/06



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG



BRIAN C. McNEIL
EXECUTIVE DIRECTOR

SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Jeff Hatch-Miller, Chairman
William A. Mundell
Mike Gleason
Kristin K. Mayes
Barry Wong

Arizona Corporation Commission

DOCKETED

AUG 25 2006

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY

AZ CORP COMMISSION
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DATE: August 22, 2006

RE: Proposed Order to Cease and Desist, Order of Revocation, Order for
Administrative Penalties and Consent to Same: Kenneth Duane Feldhacker,
Docket No. S-20469A-06-0527

CC: Brian C. McNeil, Executive Director

Attached is a proposed Order to Cease and Desist, Order of Revocation, Order for Administrative Penalties and Consent to Same ("Order") by Respondent Kenneth Duane Feldhacker ("Feldhacker"). Feldhacker is an Arizona registered securities salesman who operated out of Mesa Arizona in affiliation with Ameriprise Financial Services, Inc. fka American Express Financial Services, Inc. ("Ameriprise"). Ameriprise terminated Feldhacker on January 23, 2006, after discovering misconduct involving an unauthorized joint brokerage account with a customer.

The proposed Order finds that on January 4, 2000, Feldhacker opened a joint brokerage account with a customer, in violation of Ameriprise's policies and procedures. From January 2000 through December 2005, Feldhacker initiated withdrawals and redemptions from seven customers' brokerage accounts, without the customers' knowledge or authorization, by signing the customers' names on transfer forms and annuity surrender forms, and using blank forms signed by the customers. Feldhacker transferred the money from customers' mutual funds, variable and fixed annuities, and/or life insurance accounts to the unauthorized joint brokerage account. Feldhacker then withdrew and transferred funds from the unauthorized joint brokerage account to his own bank account, and misappropriated the funds for his own personal use.

During the five-year period, Feldhacker conducted approximately 93 fraudulent withdrawals and transfers from seven customer accounts ranging from approximately \$900.00 to \$18,474.00 for each fraudulent transfer, and totaling approximately \$278,134.00. In late 2005, Ameriprise brought allegations against Feldhacker to the Division's attention as a result of an internal investigation relating to a suspected forgery discovered by the firm on December 9, 2005. Ameriprise has offered to pay and/or reimbursed all of Feldhacker's victims the full amount of their losses, including interest.

In this proposed Order, Feldhacker has agreed to the following:

- An order to cease and desist from violations of the Securities Act and the Investment Advisory Act;
- Revocation of his Arizona securities salesman registration, and an agreement not to apply in Arizona for registration as a securities salesman or licensing as an investment adviser representative at any time in the future; and
- Administrative penalties in the amount of \$50,000.00.

In addition, Feldhacker is entering into a plea agreement with the Arizona Attorney General's Office involving this same misconduct, which will require him to pay criminal restitution to all victims, in addition to fines.

The Division believes the proposed Order to be in the public interest, and a fair and equitable resolution of this matter.

Originated by: Pam Johnson

MJN/ptj

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 BARRY WONG

8 In the matter of

9 KENNETH DUANE FELDHACKER, a
10 single individual,
11 CRD# 1801281

12 Respondent.

) DOCKET NO. S-20469A-06-0527

) DECISION NO. _____

) **ORDER TO CEASE AND DESIST, ORDER**
) **OF REVOCATION, ORDER FOR**
) **ADMINISTRATIVE PENALTIES AND**
) **CONSENT TO SAME**

12 Respondent KENNETH DUANE FELDHACKER ("FELDHACKER" or
13 "Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and
14 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this
15 Order To Cease And Desist, Order of Revocation, Order for Administrative Penalties and Consent
16 to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission
17 ("Commission"); admits only for purposes of this proceeding and any other administrative
18 proceeding before the Commission or any other agency of the state of Arizona the Findings of Fact
19 and Conclusions of Law contained in this Order; and consents to the entry of this Order by the
20 Commission.

21 **I.**

22 **FINDINGS OF FACT**

23 1. FELDHACKER was at all pertinent times a registered securities salesman in
24 Arizona since on or about February 9, 1988, CRD# 1801281, operating from a registered office in
25 Mesa, Arizona. At all times pertinent to this action, FELDHACKER was registered in Arizona in
26 association with Ameriprise Financial Services, Inc. formerly known as American Express Financial

1 Advisors, Inc. ("Ameriprise"), from February 9, 1988 until January 23, 2006, when Ameriprise
2 discharged FELDHACKER for violating company policy.

3 2. On January 4, 2000, FELDHACKER opened a joint brokerage account with a
4 customer, in violation of Ameriprise's policies and procedures. FELDHACKER misrepresented
5 on the Ameriprise joint brokerage account application that the customer was a relative.
6 Ameriprise's compliance policies and procedures prohibited its registered securities salesmen,
7 known by Ameriprise as "financial advisors," from opening any joint account between a customer
8 and a financial advisor unless there was a family relationship. FELDHACKER indicated on the
9 application that the address of record was Feldhacker's home address. The Ameriprise customer
10 whose name was on the account with FELDHACKER was unaware of the existence of the joint
11 account, or of FELDHACKER's unauthorized transfers and withdrawals from other customers'
12 accounts.

13 3. The Division's and Ameriprise's investigation of FELDHACKER revealed that
14 from January 2000 through December 2005, FELDHACKER forged customers' names on account
15 documents, including transfer forms and annuity surrender forms, and used blank forms signed by
16 customers to withdraw funds from seven customers' accounts without the customers' knowledge or
17 authorization. FELDHACKER initiated redemptions in customers' accounts and transferred
18 money from mutual funds, variable and fixed annuities, and/or life insurance accounts to the
19 unauthorized joint brokerage account. FELDHACKER withdrew and/or transferred funds from the
20 joint brokerage account to his own personal bank account, and misappropriated the funds for his
21 own personal use.

22 4. From January 2000, when FELDHACKER first opened the joint account, until
23 December 2005, FELDHACKER conducted approximately 93 fraudulent withdrawals and
24 transfers from seven customer accounts to the unauthorized joint account, ranging from
25 approximately \$900.00 to \$18,474.00 for each fraudulent transfer, and totaling approximately
26

1 \$278,134.00. Ameriprise has offered to pay and/or reimbursed all of these victims for the full
2 amount of their losses, including interest.

3 5. On December 9, 2005, when FELDHACKER submitted a new redemption and
4 transfer request form for one of the affected customers, Ameriprise questioned the transaction and
5 conducted an investigation, leading to FELDHACKER's termination for exercising discretionary
6 power over clients' accounts; forging clients' signatures on redemption forms without their
7 knowledge or authorization; commingling client funds; and using client funds that were transferred
8 into an account that he controlled for his own benefit.

9 II.

10 CONCLUSIONS OF LAW

11 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
12 Arizona Constitution and the Securities Act.

13 2. Respondent violated A.R.S. § 44-1991 by (a) employing a device, scheme or
14 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, or (c)
15 engaging in transactions, practices or courses of business which operate or would operate as a
16 fraud or deceit.

17 3. Respondent's conduct subjects Respondent to an order of revocation pursuant to
18 the following provisions of A.R.S. § 44-1962(A):

19 a. A.R.S. § 44-1962(A)(2), for violations of A.R.S. § 44-1991.

20 b. A.R.S. § 44-1962(A)(10), for dishonest and unethical practices in the securities
21 industry as defined in:

22 i. A.A.C. Rule R14-4-130(A)(6), for executing transactions on behalf of
23 customers without authority to do so;

24 ii. A.A.C. Rule R14-4-130(A)(16), for making unauthorized use of
25 securities or funds of customers or converting customer securities or
26 funds for personal benefit.

1 iii. A.A.C. Rule R14-4-130(A)(18), for operating an account under a
2 fictitious name with intent to deceive or for an illegal purpose.

3 c. A.R.S. § 44-1962(A)(12), for engaging in dishonest or unethical practices in
4 business or financial matters.

5 4. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. §§
6 44-2032 and 44-1962.

7 5. Respondent's conduct is grounds for administrative penalties under A.R.S. §§ 44-
8 2036 and 44-1962.

9 **III.**

10 **ORDER**

11 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's
12 consent to the entry of this Order, attached and incorporated by reference, the Commission finds
13 that the following relief is appropriate, in the public interest, and necessary for the protection of
14 investors:

15 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
16 agents, employees, successors and assigns, permanently cease and desist from violating the
17 Securities Act. Respondent shall not sell any securities in or from Arizona without being
18 registered in Arizona as dealers or salesmen, or exempt from such registration. Respondent shall
19 not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from
20 registration.

21 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
22 of Order.

23 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036 and A.R.S. § 44-1962, that
24 Respondent shall pay administrative penalties in the amount of \$50,000.00. Payment shall be
25 made in full on the date of this Order to the "State of Arizona." Any amount outstanding shall
26 accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent's securities
2 salesman registration is revoked.

3 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If
4 Respondent does not comply with this Order, any outstanding balance may be deemed in default
5 and shall be immediately due and payable.

6 IT IS FURTHER ORDERED that if any Respondent fails to comply with this order, the

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Commission may bring further legal proceedings against that Respondent including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Director of the Arizona Corporation
Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2006.

BRIAN C. McNEIL
Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov.

(PTJ)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent KENNETH DUANE FELDHACKER ("Respondent"), a single
3 individual, admits the jurisdiction of the Commission over the subject matter of this proceeding.
4 Respondent acknowledges that he has been fully advised of his right to a hearing to present
5 evidence and call witnesses and Respondent knowingly and voluntarily waives any and all rights
6 to a hearing before the Commission and all other rights otherwise available under Article 11 of the
7 Securities Act and Title 14 of the Arizona Administrative Code. Respondent acknowledges that
8 this Order To Cease And Desist, Order of Revocation, Order for Administrative Penalties and
9 Consent to Same ("Order") constitutes a valid final order of the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent acknowledges that he has been represented by Alan Baskin, an
16 attorney, in this matter. Respondent has reviewed this Order with his attorney and understands all
17 terms it contains.

18 5. Respondent admits, only for purposes of this proceeding and any other
19 administrative proceeding before the Commission or any other agency of the state of Arizona, the
20 Findings of Fact and Conclusions of Law contained in this Order.

21 6. By consenting to the entry of this Order, Respondent agrees not to take any action
22 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
23 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
24 factual basis. Respondent will undertake steps necessary to assure that all of his agents and
25 employees understand and comply with this agreement.
26

1 7. While this Order settles this administrative matter between Respondent and the
2 Commission, Respondent understands that this Order does not preclude the Commission from
3 instituting other administrative proceedings based on violations that are not addressed by this
4 Order.

5 8. Respondent understands that this Order does not preclude the Commission from
6 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
7 that may be related to the matters addressed by this Order.

8 9. Respondent understands that this Order does not preclude any other agency or
9 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
10 proceedings that may be related to matters addressed by this Order.

11 10. Respondent agrees that he will not apply to the state of Arizona for registration as a
12 securities dealer or salesman or for licensure as an investment adviser or investment adviser
13 representative at any time in the future.

14 11. Respondent agrees that he will not exercise any control over any entity that offers
15 or sells securities or provides investment advisory services within or from Arizona at any time in
16 the future.

17 12. Respondent agrees that he will not sell any securities in or from Arizona without
18 being properly registered in Arizona as a dealer or salesman, or exempt from such registration.

19 13. Respondent consents to the entry of this Order and agrees to be fully bound by its
20 terms and conditions.

21 14. Respondent acknowledges and understands that if he fails to comply with the
22 provisions of the order and this consent, the Commission may bring further legal proceedings
23 against him, including application to the superior court for an order of contempt.

24 15. Respondent understands that default shall render him liable to the Commission for
25 its costs of collection and interest at the maximum legal rate.
26

1 16. Respondent agrees and understands that if he fails to make any payment as required
2 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
3 without notice or demand. Respondent agrees and understands that acceptance of any partial or
4 late payment by the Commission is not a waiver of default by the Commission.

5
6 
7 KENNETH DUANE FELDHACKER

8 SUBSCRIBED AND SWORN TO BEFORE me this 21st day of August, 2006.

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10 
11 NOTARY PUBLIC

12 My Commission Expires:

13 May 14, 2009

